

BILL NO. G-74-05-48

GENERAL ORDINANCE NO. G- 14-74

AN ORDINANCE regulating unsafe buildings
and premises in Allen County

WHEREAS, the Board of Commissioners of Allen County, has determined that any building or structure that is in an impaired structural condition which renders it unsafe or dangerous to persons and property, or is a fire hazard, or is a hazard to the public health, or is a public nuisance, or does not comply with standards for building condition or maintenance which would be dangerous to any person or property, and

WHEREAS, a City-County Building and Minimum Housing Department of Allen County has been created pursuant to IC 1971, 17-2, to enforce the respective building and minimum housing codes of the City of Fort Wayne and Allen County,

NOW THEREFORE, pursuant to IC 1971, 18-5-5.5,

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. As used in this Ordinance, unless the context clearly indicates otherwise:

- (a) "Board of County Commissioners" shall mean the Board of Commissioners of Allen County.
- (b) "Department" shall mean the City-County Building and Minimum Housing Department of Allen County.
- (c) "Unsafe Building Administrator" shall mean the Building Commissioner in the territorial jurisdiction of Allen County outside the City of Fort Wayne, and the Deputy Building Commissioner, who is the Director of Minimum Housing and Relocation, within the territorial jurisdiction of the City of Fort Wayne, which Unsafe Building Administrator is hereby authorized and directed to administer this ordinance in his respective jurisdiction.
- (d) "Board" shall mean the City-County Building and Minimum Housing Department Board.

- (3) "Order" shall mean any written directive issued by the Unsafe Building Administrator in accordance with Section 2 of this Ordinance.
- (f) "Person" shall mean any entity capable of holding an interest in real estate, including (by way of example and not of limitation) individuals and corporations.
- (g) "Substantial property interest" shall mean any right in real estate susceptible of being affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate or future interest, a present possessory interest, or equitable interest of a contract purchaser.

The interest reflected by a lease, license, mortgage, land sale contract or lien shall not be deemed a substantial property interest unless the lease, license, mortgage, land sale contract, lien or evidence of the same is either:

- (1) recorded in the office of the county recorder; or
- (2) the subject of written information received by the Unsafe Building Administrator about the lease, license, mortgage, land sale contract, or lien, which includes the name and address of the holder of such interest.

(h) "Unsafe building" shall mean any building or structure, or any part thereof, that is in an impaired structural condition or state which renders it unsafe or dangerous to any person or property; or is a fire hazard; or is a hazard to the public health; or is a public nuisance; or does not comply with standards for building condition or maintenance, found in an ordinance enacted by the Board of Commissioners of Allen County or the Common Council of the City of Fort Wayne, or in a state law, if such non-compliance would be dangerous to any person or property.

(i) "Unsafe premises" shall mean any unsafe building; or the tract of real estate on which an unsafe building is located; or any unsafe building and the tract of real estate on which the unsafe building is located.

Section 2. The Unsafe Building Administrator may issue an order relative to any unsafe premises to require action, including but not limited to:

- (1) vacating of an unsafe building;
- (2) sealing an unsafe building against intrusion by unauthorized persons in accordance with a uniform standard established by the Board of Commissioners of Allen County or the Common Council of the City of Fort Wayne, within their respective jurisdictions;
- (3) extermination of vermin in and about the unsafe premises;
- (4) repair of an unsafe building to bring it into compliance with standards for building condition or maintenance found in ordinances enacted by the Board of Commissioners of Allen County or the Common Council of the City of Fort Wayne, within their respective jurisdictions or state laws;
- (5) removal of a portion of an unsafe building;
- (6) removal of an unsafe building.

The ordered action shall be reasonably related to the condition of the unsafe premises and the nature and use of nearby properties.

The order shall take precedence over any municipally-issued permit relating to building or land use which is

obtained either before or after the order is issued. The force of an order shall expire two (2) years from the day the notice of the order is given unless one (1) or more of the following events occur within such two (2) year period:

- (1) a complaint requesting judicial review is filed in accordance with Section 9 of this Ordinance;
- (2) work is let out at public bid to a contractor to perform action required by an order in accordance with Section 14 of this Ordinance;
- (3) a civil action is filed in the circuit or superior court in accordance with Section 18 of this Ordinance.

Section 3. Any order shall contain the following information:

- (1) the name of the person to whom the order is issued;
- (2) the legal description or address of the unsafe premises that are the subject of the order;
- (3) the action which the order requires to be accomplished;
- (4) the period of time in which the action is required to be accomplished measured from the time when the notice of the order is given;
- (5) a statement indicating the exact time and place of the hearing regarding the order; and that the person to whom the order was issued has a right to appear at the hearing with or without legal counsel and present evidence, cross-examine opposing witnesses, and make argument;

- (6) a statement briefly indicating what action can be taken by the Unsafe Building Administrator if the order is not complied with;
- (7) a statement indicating the obligation created by Section 11 of this Ordinance relating to notification of subsequent interest holders and the division of code enforcement;
- (8) the name, address, and telephone number of the Unsafe Building Administrator.

The order shall allow sufficient time in which to accomplish the required action. In no case shall less than ten (10) calendar days from the time when notice of the order is given be allowed for compliance with an order.

In the instance where more than thirty (30) calendar days are allowed by the order to accomplish the action the order may require that a substantial beginning be made in accomplishing the action within a period of thirty (30) calendar days.

Section 4. If service of the order is by publication, the publication shall include the information required by subsections (1), (2), (4), (5), (6), and (8) of Section 3 of this Ordinance and also a statement indicating generally what action is required by the order and that the exact terms of the order may be obtained from the Unsafe Building Administrator.

Section 5. The Unsafe Building Administrator may issue an order to a person which has the effect of modifying the order previously issued to that person.

If service of the previously issued order was by publication it shall be sufficient to serve the subsequent order by

publication unless the Unsafe Building Administrator has received information in writing that would enable it to make service in accordance with Section 7 of this Ordinance by a method other than publication.

Section 6. The Unsafe Building Administrator may at any time rescind an order. All persons who have been issued an order shall be notified of its rescission pursuant to Section 7 of this Ordinance by means of a written statement which shall include the following information:

- (1) the name of the person to whom the statement of rescission of order is issued;
- (2) the legal description or address of the unsafe premises that are the subject of the order being rescinded;
- (3) the substance of the order being rescinded;
- (4) a statement that the order is being rescinded;
- (5) the name, address, and telephone number of the Unsafe Building Administrator.

If service of the statement of rescission is by publication, the publication shall include the information provided above.

If service of the order being rescinded was by publication it shall be sufficient to serve the statement of rescission by publication unless the Unsafe Building Administrator has received information in writing that would enable it to make service in accordance with Section 7 of this Ordinance by a method other than publication.

Section 7. (a) Notice of orders (including orders which have the effect of modifying a previous order), notice of statements of rescission, notice of continued hearings, and notice that a hearing may be held on the amounts indicated in the record shall be given to all persons to whom directed by the following manner of service:

shall be given to all persons to whom directed by the following manner of service:

- (1) sending a copy of the order or statement by registered or certified mail to the residence or place of business or employment of the person to be notified with return receipt requested; or
- (2) delivering a copy of the order or statement personally to the person to be notified; or
- (3) leaving a copy of the order or statement at the dwelling house or usual place of abode of the person to be notified.

(b) In the event service is not obtained by a means described above after reasonable effort, service may be made by publishing a notice of the order or statement at least two (2) times in a newspaper authorized by law to publish notices, which is published in the county where the unsafe premises are located. Publication may be made on consecutive days.

(c) When service is made by any of the means described in this section except by mailing or by publication, the person making service shall make an affidavit stating that he has made the service, the manner in which made, to whom the order or statement was issued, the nature of the order or statement, and the date of service. The affidavit shall be placed on file in the office of the Unsafe Building Administrator.

(d) The time when notice of the order or statement is deemed given is as follows:

- (1) in case of personal delivery or leaving at the dwelling house or usual place of abode, the day when the order or statement is delivered to the

person or left at his dwelling house or usual place of abode;

- (2) in the case of mailing, the date shown on the return receipt, or if no date is shown, the date when the return receipt is received by the Unsafe Building Administrator;
- (3) in the case of publication, the date of the second day that publication was made.

Section 8. A hearing shall be held relative to each order. The hearing shall be conducted by the City-County Minimum Housing Department Board. The Board however, may designate a person to act as its representative to conduct the hearing...

The hearing shall be held on a business day no earlier than ten (10) calendar days after notice of the order is given. The Board may, however, take action at a hearing to continue the hearing relative to the order so that it will be held on a later business day. Unless the Board takes action to have the continued hearing held on a definite, specified date, notice of the hearing shall be given to the person to whom the order was issued at least five (5) calendar days before the hearing date in the manner provided by Section 7 of this Ordinance. If the order which is being considered at the hearing was served by publication, it shall be sufficient to give notice of the continued hearing by publication unless the Unsafe Building Administrator has received information in writing that would enable him to make service in accordance with Section 7 of this Ordinance by a method other than publication.

The person to whom the order was issued, or any person having a substantial property interest in the unsafe premises which are the subject of the order may appear in person or by

counsel at the hearing. Such person shall have the opportunity to present evidence, cross-examine opposing witnesses, and make argument.

At the conclusion of any hearing at which a continuance is not granted the Board may, irrespective of whether such person does or does not appear at the hearing, make findings and take action to either:

- (1) affirm the order, or
- (2) rescind the order, or
- (3) modify the order, Provided, however, That unless the person to whom the order was issued, or counsel for such person, is present at the hearing, any such modification must be made in such manner as to make its terms less stringent.

If a person to whom an order has been issued requests at a hearing a period of time to accomplish action beyond that time stated in the order, the Board may, as a condition for modifying the order to allow the additional time period, require that the person post a cash performance bond to be forfeited in the event that the ordered action is not completed within the additional time period allowed. The amount of such bond shall be equal to thirty per cent (30%) of the value of the services and materials required to accomplish the ordered action.

The record of the findings made and action taken by the Board at the hearing shall be available to the public upon request. No provision in this Ordinance shall be construed to require affirmative action by the Unsafe Building Administrator or the Board to give notice of the findings made and action taken by the Board at the hearing to the person to whom the order was

issued, or any other person.

Section 9. An action taken to affirm, rescind or modify an order in accordance with Section of this Ordinance shall be subject to review by the circuit or superior court of Allen County in which the unsafe premises are located. The review shall be initiated by a verified complaint which shall include the findings of fact and the action taken by the Board. Such complaint must be filed within a period of ten (10) calendar days after the date when action was taken by the Board.

The following persons shall have the right to request judicial review:

- (1) any person who has a substantial property interest in the unsafe premises which were the subject of the order reviewed by the Board;
- (2) any person to whom the order was issued that was reviewed by the Board.

The appeal shall be an action de novo, and shall take precedence over other pending litigation. There shall be no change of venue from the county. The court may affirm, modify, or reverse the action taken by the Board.

Section 10. Orders issued in accordance with Sections 2 or 5, statements of rescission issued in accordance with Section 6, statements that public bids are to be let as provided in Section 14, and records of action taken by the Board in accordance with Section 8 of this Ordinance shall be recorded in the office of the recorder of the county by the Unsafe Building Administrator at no charge.

Any person who takes an interest in the unsafe premises which are the subject of an order, shall, irrespective of whether or not a hearing has been held, take the interest subject to the terms of the order and specifically in such a manner that all of

the requirements of Section 14 relating to the issuance of orders, service of orders and affirmation of orders are deemed satisfied and all of the requirements of Section 18 relating to issuance of orders and affirmation of orders are deemed satisfied. In the instance however, where an interest is taken in the unsafe premises relative to which a hearing has been held such person shall take the interest subject to the terms of the order as modified at the hearing and specifically in such a manner that all of the requirements of Section 14 relating to the issuance of orders, service of orders and modification of orders at hearing are deemed satisfied and all of the requirements of Section 18 relating to the issuance of orders and modification of orders at hearing are deemed satisfied.

A person who takes an interest in an unsafe premises which are the subject of a statement that public bids are to be let, shall take the interest subject to the terms of such statement and specifically in such a manner that the notice of such statements required by Section 13 of this Ordinance is deemed given to such person.

Section 11. Any person who has been issued and received notice of an order relative to the unsafe premises, shall, if the order has not been complied with:

- (1) supply full information regarding the order to any person who may take or agree to take a substantial property interest in the unsafe premises. This information shall be supplied prior to the time when there is any transfer or agreement to transfer any substantial property interest in the unsafe premises;
- (2) supply the following information to the Unsafe

Building Administrator in writing within five (5) calendar days after there is any transfer or agreement to transfer a substantial property interest in the unsafe building:

- (a) the full name, address, and telephone number of the person taking a substantial property interest in the unsafe premises; and
- (b) a true and accurate copy of the legal instrument under which the transfer or agreement to transfer the substantial property interest is accomplished.

Section 12. If in any instance the Unsafe Building Administrator shall find that it is necessary to take emergency action with reference to an unsafe premises in order to protect life, safety, or property, the Administrator may cause such action as is necessary to protect life, safety, or property to be performed without issuing an order or giving notice.

Such emergency action shall be limited to removing any immediate danger. The costs incurred by the Unsafe Building Administrator in taking or having such action taken may be recovered against the persons who have a fee interest or life estate interest in the unsafe premises by the filing of a civil action in the Circuit or Superior Court of Allen County by the County of Allen acting by and through the Unsafe Building Administrator. Costs of such an action shall not be borne by the City-County Building and Minimum Housing Department.

Section 13. In accordance with Section 18, a receiver may be appointed by a court of competent jurisdiction relative to an unsafe premises subject to the following provisions:

- (a) The purpose of the receivership shall be to take possession of the unsafe premises for a period of

time sufficient to accomplish and pay for repairs and improvements.

- (b) The receiver may be a not-for-profit corporation whose primary purpose is the improvement of housing conditions in the City of Fort Wayne or in Allen County outside said City or the receiver may be any capable person residing in said City or in said County outside said City.
- (c) The receiver shall collect and use the rents and the other income of the unsafe premises despite any prior assignments thereof, to repair or remove the defects as required by the order, and may upon approval by the court make repairs and improvements in addition to those specified in the order or required by the applicable statutes, ordinances, codes or regulations.
- (d) The receiver shall have the power to make any contracts and do all things necessary to accomplish the repair and improvement of the unsafe premises.
- (e) The court may after hearing authorize the receiver to obtain moneys needed to accomplish the repairs and improvement by the issuance and sale of notes or receivers' certificates bearing such interest as the court may fix. The notes or certificates shall be a first lien upon the unsafe building and the real estate on which the unsafe building is located and on the rents and income thereof, and shall be superior to all existing assignments of rents, or liens, mortgages or other encumbrances on the property except taxes, Provided That within sixty (60) days following the sale or transfer for value of the notes by the receiver the holder thereof

shall file notice in the recorder's office which shall contain the following information:

- (1) the legal description of the tract of real estate on which the unsafe building is located;
- (2) the face amount and interest rate of the note or certificate;
- (3) the date when the note or certificate was sold or transferred by the receiver;
- (4) the date of maturity.

Upon payment to the holder of the receiver's note or certificate of the face amount and interest, and upon filing in the recorder's office of a sworn statement of payment, the lien of such certificate shall be released. Upon failure of payment, the lien may be enforced by proceedings to foreclose as in the case of mechanic's liens or mortgages, however, such suit must be commenced within two (2) years after the date of default.

The receiver shall be entitled to the same fees, commissions and necessary expenses as are receivers in actions to foreclose mortgages and said fees, commissions, and expenses shall be paid out of the rents and incomes of the property in receivership.

Section 14. (a) The Unsafe Building Administrator may cause the action required by an order to be performed by a contractor if the following has occurred:

- (1) an order has been issued to each person having a substantial property interest in the unsafe premises; and
- (2) service of an order in the manner provided by Section 7 of this Ordinance has been made on each person having a substantial property interest in the unsafe premises which are the subject of the order; and
- (3) each of the orders have been affirmed or modified at hearing in such manner that all persons having

a substantial property interest in the unsafe premises which are the subject of the orders are currently subject to an order requiring the accomplishment of substantially identical action; and

- (4) the order, as affirmed or modified at the hearing, has not been complied with, or, having once been complied with, is not now being complied with; and
- (5) the order is not being reviewed in accordance with Section 9 of this Ordinance.

(b) Such work shall be let out at public bid in the same manner, and pursuant to the statutes governing contracts of counties for public improvements, by the Board of Commissioners of Allen County, upon written request of the Unsafe Building Administrator to a contractor licensed and duly qualified under the laws of the State of Indiana and any applicable municipal ordinances.

(c) All persons with a substantial property interest in the unsafe building shall be notified about the public bid in accordance with Section 7 of this Ordinance by means of a written statement, which shall include the following information:

- (1) the name of the person to whom the order was issued;
- (2) a legal description or address of the unsafe premises that are the subject of the order;
- (3) a statement that a contract is to be let at public bid to a licensed contractor to accomplish work to comply with the order;
- (4) a description of work to be accomplished;
- (5) a statement that both the bid price of the licensed

contractor who accomplishes the work and an amount representing a reasonable estimate of the cost incurred by the County in processing the matter of the unsafe premises, may, if not paid, be recorded after a hearing as a lien against all persons having a fee interest or life estate interest in the unsafe premises;

- (6) a statement that the owner has the right to elect in writing within a period of five (5) calendar days to retain any or all materials salvaged from the work;
- (7) the time of the bid opening;
- (8) the place of the bid opening;
- (9) the name, address and telephone number of the Unsafe Building Administrator.

- (d) If service of the notice of statement that public bids are to be let is by publication, the publication shall include the information provided for in subsection (c) except that it need only include a general description of the work to be accomplished. The publication also shall include a statement that a copy of the statement of public bid may be obtained from the County Auditor.
- (e) Notice of the statement that public bids are to be let shall be given to all persons having a substantial property interest in the property at least ten (10) calendar days before the date of the public bid.
- (f) Persons having a substantial property interest in the unsafe premises which are the subject of a statement that public bids are to be let may,

as their interest allows, within a period of five (5) calendar days after they have received notice of such statement, elect by sending a statement in writing to the Unsafe Building Administrator to retain any or all of the materials resulting or salvaged from such work. In the absence of such a statement, the Unsafe Building Administrator may decide the method of disposal of such materials.

(g) If action in accordance with this section is being taken on the basis of an order which was served by publication, it shall be sufficient to serve the statement that public bids are to be let by publication unless the Unsafe Building Administrator has received information in writing that would enable him to make service in accordance with Section 7 of this Ordinance by a method other than publication.

Section 15. When action required by an order is performed by a contractor in accordance with Section 14 of this Ordinance; any person or persons who have a fee interest or life estate interest in the unsafe premises shall be obligated to pay the following costs:

- (1) The bid price of work accomplished by the contractor in accordance with Section 14 of this Ordinance;
- (2) An amount which represents a reasonable forecast of the average processing expense which will be incurred by the County in taking all the technical, administrative and legal actions relative to a typical unsafe premises which are necessary under this Ordinance so that the action required by an

order may be performed by a contractor in accordance with Section 14. In calculating the amount of the average processing expense, the following costs may be considered:

- (a) obtaining reliable information about the identity and location of persons who own a substantial property interest in the unsafe premises;
- (b) accomplishing notice of orders, notice of statements of rescission, notice of continued hearing, and notice of statements that public bids are to be let and notice that a hearing may be held on the amounts indicated in the record in accordance with Section 7;
- (c) salaries for employees;
- (d) supplies, equipment, and building space.

The amount of such average processing expense shall be determined by the City-County Building and Minimum Housing Department Board at a public hearing relative to which notice has been given in the same manner as is required for other official action of the Board. The Board shall take action to fix such average processing expense for a specified period of time in the future not less frequently than once every twelve (12) months. In determining such average processing expense, it shall be acceptable to fix the amount at a full dollar amount, which is an even multiple of ten (10).

If all of any part of the bid price and the applicable average processing expense remain unpaid relative to any unsafe premises after a period of thirty (30) days has elapsed after the completion of the work by the contractor, the administrator shall prepare a record which shall state the name or names and last

know address of all persons who have a fee interest or life estate interest in the unsafe premises, the legal description or address of the unsafe premises that were the subject of work by the contractor, the nature of the work that was accomplished by such contractor, the amount of the unpaid bid price of the work that was accomplished by the contractor, and the amount of the unpaid average processing expense.

This record shall be in form prescribed by or approved by the State Board of Accounts. The Administrator shall swear to the accuracy of the record prepared by him before the Clerk of the Circuit Court and shall thereupon deposit the record in the office of the Clerk of the Circuit Court. Notice that the record has been filed and that a hearing on the amounts indicated in the record may be held shall be sent to the person or persons named in the record, as provided in Section 7 of this Ordinance. If within thirty (30) days of that notice, the Clerk of the Circuit Court has received a written petition from the person named in the record, objecting to the amounts recorded and requesting a hearing, the Clerk of the Circuit Court shall enter the cause on the docket of the Court as a civil action and a fair hearing on the question shall be held, pursuant to the provisions of IC 1971, 4-22-1, the Administrative Adjudication Act. At the conclusion of the hearing on the petition, the court shall either sustain the petition or enter a judgment for the amounts recorded or modified amounts against the person or persons named in the record. If no petition is received at the end of thirty (30) days after notice to the person or persons named in the record, the amounts stated in the record shall constitute a debt and be a lien on all the real and personal property of the person or the joint and several debt and

lien on the real and personal property of the persons named. Such lien on any real property shall be perfected as against all creditors and purchasers when the judgment is entered on the judgment docket of the Court. Such lien on personal property shall be perfected by filing a lis pendens notice in the appropriate filing office as prescribed in Trial Rule 63.1 of the Indiana Rules of Procedure. Any judgments rendered under this section may be enforced in the same manner as all other judgments are enforced.

Section 16. (a) A fund designated as the "Unsafe Building Fund" shall be established in the operating budget of the City-County Building and Minimum Housing Department. Any balance remaining at the end of any fiscal year shall be carried over in the fund for the following year and shall not revert to the general fund.

(b) Moneys for such fund may be received from any source, including appropriation by a municipal, state or federal legislative authority, and donations.

The following moneys shall be deposited in such fund:

- (1) moneys received as payment for or settlement of obligations or judgments created in accordance with Sections 12, 14, 15, and 18 of this Ordinance.
- (2) moneys received from bonds posted in accordance with Section 8 of this Ordinance,
- (3) moneys received in satisfaction of receivers notes or certificates issued in accordance with Section 13 of this Ordinance, which were purchased with use of moneys from the unsafe building fund.

(c) Moneys included in the unsafe building fund may be used for the purposes directly related to the

carrying out of any provisions of this Ordinance which shall include, by way of example and not of limitation:

- (1) The cost of obtaining reliable information about the identity and location of persons who own a substantial property interest in an unsafe premises.
- (2) The cost of an examination of an unsafe building by a registered architect or registered engineer not employed by the City-County Building and Minimum Housing Department.
- (3) The cost of surveys necessary to determine the location and dimensions of real estate on which an unsafe building is located.
- (4) The cost of accomplishing notice of orders, notice of statements of rescission, notice of continued hearing and, notice of statements that public bids are to be let in accordance with Section 8 of this Ordinance.
- (5) The bid price of work accomplished by a contractor in accordance with Section 14 or Section 13 of this Ordinance.
- (6) The cost of accomplishing work on an emergency basis in accordance with Section 12.
- (7) The cost of notes or receiver certificates issued in accordance with Section 13.

(d) Payment of moneys from the unsafe building fund shall be made in accordance with applicable law.

Section 17. (a) In those cases in which the owners or those in possession of a building refuse inspection, the Unsafe Building Administrator or his authorized inspector may obtain an

inspection warrant from any court of record in the county in which the building is located in order to determine if the building is an unsafe building. The court shall issue the warrant subject to the following:

- (1) the person seeking the warrant must establish that the building to be searched or inspected is to be searched or inspected as part of a legally authorized program of inspection which naturally includes that building or that there is probable cause for believing that there is a condition, object, activity or circumstance which legally justifies such a search or inspection of that building;
- (2) an affidavit indicating the basis for the establishment of one (1) of the grounds described in (1) above must be signed under oath or affirmation by the affiant;
- (3) the issuing official must examine the affiant under oath or affirmation to verify the accuracy of the matters indicated by the statement in the affidavit.

(b) The warrant shall be validly issued only if it meets the following requirements:

- (1) it must be signed by the issuing official and must bear the date and hour of its issuance above his signature with a notation that the warrant is valid only forty-eight (48) hours following its issuance;
- (2) it must describe, either directly or by reference to the affidavit the building where the search or inspection is to occur and be accurate enough in

description so that the executor of the warrant and owner or the possessor of the building can reasonably determine from it what property the warrant authorizes an inspection of;

- (3) it must indicate the conditions, objects, activities or circumstances which the inspection is intended to check or reveal;
- (4) It must be attached to the affidavit required to be made in order to obtain the warrant.
- (c) Any warrant issued under this section for a search or inspection shall be valid for only forty-eight (48) hours after its issuance, must be personally served upon the owner or possessor of the building and must be returned within seventy-two (72) hours.

Section 18. The City-County Building and Minimum Housing Department, acting by and through its Unsafe Building Administrator may initiate a civil action in the name of the County in the Circuit or Superior Court of Allen County with regard to an unsafe premises. Costs of such an action shall not be borne by the department.

The Circuit or Superior Court may, as is appropriate, grant one (1) or more of the following kinds of relief in such an action:

- (1) If the following is shown, grant a mandatory or prohibitory injunction against any person that will cause the order to be complied with:
 - a. an order was issued to the person; and
 - b. the person has a property interest in the unsafe premises that are the subject of the order that would allow the person to take the action required by the order; and
 - c. the Board has taken action at a hearing either to affirm or modify the order; and
 - d. the building which is the subject of the order is an

unsafe building; and

- e. the order, as affirmed or modified at hearing, has not been complied with, or, having once been complied with, is not now being complied with; and
- f. the order is not being reviewed in accordance with Section 9.

- (2) Impose a civil forfeiture not to exceed one thousand dollars (\$1,000) against any person if the provisions of subsection (1) of this section are shown:

No forfeiture shall be imposed which is substantially less than the cost of complying with the order unless such cost exceeds one thousand dollars (\$1,000). The effective date of such forfeiture may be postponed for a period not to exceed thirty (30) days after which the court may order the forfeiture reduced or stricken if it is satisfied that all work necessary to fully comply with the order has been completed.

On request of the Unsafe Building Administrator the court shall enter a judgment in the amount of the civil forfeiture. In any instance where there is more than one (1) party defendant, the civil forfeiture shall be separately applicable to each defendant.

The amount of any civil forfeiture which is collected shall be deposited in the unsafe building fund.

- (3) Appoint a receiver as provided in Section 13 of this Ordinance.

The issuance of an order relative to such unsafe premises is not a prerequisite to the appointment of a receiver. If an order has been issued relative to such unsafe premises it shall not prevent the appointment of a receiver.

In any case in which the Unsafe Building Administrator requests the appointment of a receiver, all persons having a sub-

stantial property interest in the unsafe premises shall be made party defendants.

(4) If the following is shown, authorize the county, acting by and through the Unsafe Building Administrator, to cause the action required by the order to be performed by a contractor licensed and qualified under applicable state law and municipal ordinances:

- a. an order was issued to each person having a substantial property interest in the unsafe premises; and
- b. each of the orders have been affirmed or modified at hearing in such manner that all persons having a substantial property interest in the unsafe premises which are the subject of each of the orders are currently subject to an order requiring the accomplishment of substantially identical action; and
- c. the order, as affirmed or modified at the hearing, has not been complied with, or, having once been complied with, is not now being complied with; and
- d. the building which is the subject of the order is an unsafe building; and
- e. the order is not being reviewed in accordance with Section 9.

In any case in which the Unsafe Building Administrator requests authority to cause the action required by the order to be performed by a contractor all persons having a substantial property interest in the unsafe premises shall be made party defendants.

The cost of accomplishing the work and the processing expenses incurred by the Unsafe Building Administrator computed

in accordance with the provisions of Section 15 of this Ordinance may after a hearing both be entered by the court as a judgment against persons having a fee interest or life estate interest in the unsafe premises.

Section 19. Any person who shall remain in, use or enter any building in violation of an order; or wilfully interfere with or delay the carrying out of any order; or violate any provision of this Ordinance by wilfully obstructing, delaying, damaging, injuring, or interfering with any persons engaged or property used in performing any work or duty under or authorized by this Ordinance; or fail to comply with the requirements of Section 11 of this Ordinance, shall be guilty of a misdemeanor and upon conviction shall be fined in a sum not to exceed five hundred dollars (\$500), and each day that the violation shall continue to exist, or each distinct repetition of any violation, shall constitute a separate offense.

Section 20. All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed, and this Ordinance shall be in full force and effect immediately upon its adoption.

Section 21. This Ordinance shall not affect any pending litigation or rights or obligations which have accrued under ordinances existing at the time of the adoption hereof.

Section 22. If any provision of this Ordinance or the application thereof to any person or circumstance is invalid, which invalidity shall not affect the other provisions or applications of this Ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable. Should any

section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional for any reason, the remainder of said Ordinance shall not be affected thereby.

SECTION 23. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.

John Shuckole
Councilman

APPROVED AS TO FORM
AND LEGALITY
Bob B. C.
CITY ATTORNEY

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197_____, at _____ o'clock P.M., E.S.T.

Date: _____

CITY CLERK

Read the third time in full and on motion by Nuckols, seconded by V. Schmidt, and duly adopted, placed on its passage. Passed (LOST) by the following vote:

AYES	<u>9</u>	NAYS	<u>0</u>	ABSTAINED	ABSENT	to-wit:
BURNS	<u>✓</u>					
HINGA	<u>✓</u>					
KRAUS	<u>✓</u>					
MOSES	<u>✓</u>					
NUCKOLS	<u>✓</u>					
SCHMIDT, D.	<u>✓</u>					
SCHMIDT, V.	<u>✓</u>					
STIER	<u>✓</u>					
TALARICO	<u>✓</u>					

DATE: 5-28-74

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. 8-14-74 on the 28th day of May, 1974.

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 29th day of May, 1974, at the hour of 11:00 o'clock
A. M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 29th day of May, 1974, at the hour of 3:30 o'clock R. M., E.S.T.

John H. French
MAYOR

SUSPENSION OF RULES

BILL NO. B-74-05-48

Councilman Nuckols, moved to suspend the rules on passage of BILL NO. B-74-05-48, at this meeting of May 28, 1974, of the Common Council of the City of Fort Wayne, Indiana. Said motion was seconded by Councilman Hinga, and duly passed by unanimous vote of all legally elected members of the said Common Council.

The above BILL and General ORDINANCE was accordingly placed on its passage.

DATE: 5-28-74

Samuel J. Talarico
PRESIDING OFFICER

Charles W. Westerman
CITY CLERK

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT</u>
<u>BURNS</u>	<u>X</u>	—	—	—	—
<u>HINGA</u>	<u>X</u>	—	—	—	—
<u>KRAUS</u>	<u>X</u>	—	—	—	—
<u>Moore</u>	—	—	—	—	—
<u>Nuckols</u>	<u>X</u>	—	—	—	—
<u>Tuckols</u>	—	—	—	—	—
<u>MOSES</u>	<u>X</u>	—	—	—	—
<u>D. SCHMIDT</u>	<u>X</u>	—	—	—	—
<u>V. SCHMIDT</u>	<u>X</u>	—	—	—	—
<u>STIER</u>	<u>X</u>	—	—	—	—
<u>TALARICO</u>	<u>X</u>	—	—	—	—

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as B- 14-74.

ATTEST: (SEAL)

DATE: 5-28-74

Charles W. Westerman
CITY CLERK



CITY OF FORT WAYNE

FORT WAYNE, INDIANA

CHARLES W. WESTERMAN
CITY CLERK

May 30, 1974

Miss Helen Libbing
Fort Wayne Newspapers, Inc.
600 West Main Street
Fort Wayne, Indiana 46802

Dear Miss Libbing:

Please give the attached full coverage on the dates of June 1 and June 8, 1974, in both the News Sentinel and Journal Gazette.

RE: Legal Notice for Common Council
of Fort Wayne, Indiana, for the
following ordinances:
Zoning Map Ordinance No. Z-09-74
(Zoning Map No. C-14)
General Ordinance No. G12-74
(Vacation of portion of
Nevada Ave.)
General Ordinance No. G-13-74
(Vacation of Alley)
General Ordinance No. G-14-74
(Regulating unsafe buildings and
premises in Allen County)

Please send us six (6) copies of each paper of the Publisher's Affidavit.

Thank you.

Sincerely,

Charles W. Westerman

Charles W. Westerman
City Clerk

CWW/ne
ENCL: 4

Number of

Pursuant to the provis

I hereby certify that the
creditor, and that no part

Date June 10

Notice is hereby given that on the 28th day of May, 1974, the Common Council of the City of Fort Wayne, Indiana, in its last session did pass the following Bill No. G-73-48 & G-74-74 General Ordinance, on:

GENERAL ORDINANCE NO. G-1474
AN ORDINANCE regarding unsafe buildings and structures and the same.

WHEREAS, the Board of Commissioners of Allen County, Indiana, has the power to regulate the use of any building or structure that is in an impaired or dangerous condition which endangers the health, safety, or property of the public; and

WHEREAS, the City of Fort Wayne and Minimum Housing Department, Allen County, has been created pursuant to the provisions of Indiana Code 36-2-1-1 and minimum housing codes of the City of Fort Wayne;

NOW THEREFORE, pursuant to IC 1971, IT IS ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA;

SECTION 1. That this ordinance, containing the same, clearly indicates otherwise;

(a) "Board of Commissioners" shall mean the Board of Commissioners of Allen County;

(b) "Department" shall mean the City County Building and Minimum Housing Department of Allen County;

(c) "Unsafe Building" or "Administrator" shall mean the Building Administrator, the territorial jurisdiction of Allen County unless otherwise specified, or the City County Building Deputy Building Commissioner, who is the Director of the Department of Public Relocation, within the territorial jurisdiction of the City of Fort Wayne, which oversees the enforcement of the laws, rules, and regulations and directed to administer this ordinance;

(d) "Board" shall mean the City County Building and Minimum Housing Department Board;

(e) "Owner" shall mean any person who receives or leases any property or interest in property, including (by way of example and not of limitation) by lease, license, or option;

(g) "Substantial property interest" means any interest reflected in a substantial way by actions authorized by the chapter, or by any other person, or by any future interest, a present possessory interest, or a right to receive a present or future interest;

The term "owner" as affected by a lease, license, mortgage, lease, oral contract or loan shall not include a substantial property interest unless the owner holds a substantial contract, title, or evidence of the same;

(i) "Recorded" in the office of the county recorder;

(j) "Subject of written information" received by the Board or the Building Administrator about the lease, license, mortgage, loan, or other contract for building condition or maintenance, found in an ordinance, resolution, or order of the commissioners of Allen County or the Common Council of the City of Fort Wayne, or in a state law, if such non-compliance would be dangerous to health or safety;

(l) "Person" shall mean any entity, corporation, partnership, firm, association, or individual, including (by way of example and not of limitation) by lease, license, or option;

(m) "Substantial cause" means any substantial cause, including (by way of example and not of limitation) by lease, license, or option;

(n) "Substantial property interest" means any interest reflected in a substantial way by actions authorized by the chapter, or by any other person, or by any future interest, a present possessory interest, or a right to receive a present or future interest;

The term "owner" as affected by a lease, license, mortgage, lease, oral contract or loan shall not include a substantial property interest unless the owner holds a substantial contract, title, or evidence of the same;

(o) "Unsafe building" shall mean any building or structure, or any part thereof, that is in an impaired or dangerous condition which endangers the health, safety, or property of the public; or is a fire hazard; or is a hazard to the public health; or is a public nuisance; or causes damage to property for building condition or maintenance, found in an ordinance, resolution, or order of the commissioners of Allen County or the Common Council of the City of Fort Wayne, or in a state law, if such non-compliance would be dangerous to health or safety;

(p) "Unsafe premises" shall mean any unsafe building or the tract of real estate on which an unsafe building is located, or any tract of real estate on which the unsafe building is located;

Section 2. The Unsafe Building Administrator may issue an order to any owner of unsafe premises to require action in accordance with this section;

(1) sealing an unsafe building;

(2) sealing an unsafe building against infiltration;

(3) sealing an unsafe building in accordance with a uniform standard established by the Building Administrator or Allen County or the Common Council of the City of Fort Wayne, within their respective jurisdictions or states;

(4) sealing an unsafe building in accordance with a uniform standard established by the Building Administrator or Allen County or the Common Council of the City of Fort Wayne, within their respective jurisdictions or states;

(5) demolishing or removing an unsafe building;

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Common Council - City of Fort Wayne
(Governmental Unit)

To: JOURNAL-GAZETTE Dr.

Allen County, Ind.

FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set)
— number of equivalent lines

Head number of lines

1091

Body number of lines

2

Tail number of lines

1093

Total number of lines in notice

COMPUTATION OF CHARGES

1093 lines, 1 columns wide equals 1093 equivalent lines at .288¢ cents per line

\$ 314.78

Additional charge for notices containing rule or tabular work (50 per cent of above amount)

2.00

Charge for extra proofs of publication (50 cents for each proof in excess of two)

\$ 316.78

TOTAL AMOUNT OF CLAIM

DATA FOR COMPUTING COST

Width of single column 11 ems

Size of type 5 1/2 pointNumber of insertions 2Size of quad upon which type is cast 5 1/2

Pursuant to the provision and penalties of Ch. 89, Acts 1967,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

*Amilia De Told*Date: June 10 1974Title: CLERK

(3) exterior of vermis in ^{the} ^{city} ^{of} ^{INDIANA} ^{is} ⁱⁿ ^{good} ^{condition} ^{and} ^{is} ^{not} ⁱⁿ ^{need} ^{of} ^{any} ^{repairs} ^{or} ^{repairs} ^{at} ^{an} ^{unsafe} ^{building} ^{or} ^{dangerous} ^{conditions} ^{and} ^{is} ^{not} ⁱⁿ ^{need} ^{of} ^{any} ^{repairs} ^{or} ^{repairs} ^{at} ^{an} ^{unsafe} ^{building} ^{or} ^{dangerous} ^{conditions} ^{and} ^{is} ^{not} ⁱⁿ ^{need} ^{of} ^{any} ^{repairs} ^{or} ^{repairs} ^{at} ^{an} ^{unsafe} ^{building} ^{or} ^{dangerous} ^{conditions} ^{and} ^{is} ^{not} ⁱⁿ ^{need} ^{of} ^{any} ^{repairs} ^{or} ^{repairs} ^{at} ^{an} ^{unsafe} ^{building} ^{or} ^{dangerous} ^{conditions} ^{and} ^{is} ^{not} ⁱⁿ ^{need} ^{of} ^{any} ^{repairs} ^{or} ^{repairs} ^{at} ^{an} ^{unsafe} ^{building} ^{or} ^{dangerous} ^{conditions} ^{and} ^{is} ^{not} ⁱⁿ ^{need} ^{of} ^{any} ^{repairs} ^{or} ^{repairs} ^{at} ^{an} ^{unsafe} ^{building} ^{or} ^{dangerous} ^{conditions} ^{and} ^{is} ^{not} ⁱⁿ ^{need} ^{of} ^{any} ^{repairs} ^{or} ^{repairs} ^{at} 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